

1 Virginia *Arbitration Order* ¶¶ 624, 628. Nothing has changed since the Bureau issued  
2 this ruling, so there is no reason for the Bureau to accept Cavalier’s proposal.

3 **III. RESPONSIBILITY FOR TERMINATING CHARGES (ISSUE C4)**

4 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

5 A. Cavalier’s Proposed Section 7.2.6 would agree to reimburse Verizon for the cost of  
6 terminating traffic when Verizon provides transit traffic *only* when the terminating  
7 charges, billed by a third party, are “proper.” Verizon has offered Cavalier a compromise  
8 in which Verizon would be willing to dispute charges from a terminating carrier at  
9 Cavalier’s request if Cavalier indemnifies Verizon.

10 **Q. HOW DOES THIS ISSUE ARISE?**

11 A. This issue involves transit calls that Cavalier originates and sends to Verizon’s tandem,  
12 which, in turn, sends the calls to a third carrier for termination on behalf of Cavalier. The  
13 terminating carrier should bill Cavalier directly for these calls. However, if Verizon is  
14 billed by the terminating carrier, Verizon should be able to pass these charges on to  
15 Cavalier, which, as the originating carrier, is the only party with a direct relationship to  
16 the customer, and therefore the party that is responsible for the charges associated with its  
17 customers’ calls.

1 **Q. DOES VERIZON PROPOSE CONTRACT LANGUAGE THAT**  
2 **APPROPRIATELY ASSIGNS RESPONSIBILITY FOR TERMINATING**  
3 **CHARGES?**

4 A. Yes. Verizon's Proposed Section 7.2.6 requires Cavalier to pay Verizon for transit  
5 service that Cavalier originates. It also states that Cavalier will indemnify Verizon for  
6 charges billed by terminating carriers for Cavalier's calls.

7 **Q. WHY DOES VERIZON PROPOSE TO HAVE CAVALIER INDEMNIFY**  
8 **VERIZON FOR TERMINATING CHARGES? SHOULDN'T THE**  
9 **TERMINATING CARRIER BILL THESE CHARGES DIRECTLY TO**  
10 **CAVALIER?**

11 A. It is the normal industry practice for a terminating carrier to bill these charges directly to  
12 the originating carrier. In some instances, however, the terminating carrier bills the  
13 transit provider – in this case, Verizon. Verizon is willing to dispute these charges,  
14 provided that Cavalier agrees to indemnify Verizon for all the charges that Verizon  
15 ultimately pays and for Verizon's costs of disputing those charges. Verizon should be  
16 able to pass these costs along to the originating carrier – which, as noted, is the only party  
17 with a direct relationship with the customer who made the call.

18 **Q. DOES CAVALIER PROPOSE ANY OTHER CHANGES TO SECTION 7.2.6?**

19 A. Yes. Cavalier proposes to make Section 7.2.6 reciprocal, that is, to provide for the  
20 possibility that Cavalier might provide transit services to Verizon – something that  
21 Cavalier does not do today.

1 **Q. DOES VERIZON AGREE WITH CAVALIER'S PROPOSAL?**

2 A. Verizon agrees with Cavalier's proposal in principle, but it would be less cumbersome to  
3 reflect reciprocal obligations in a single section rather than multiple sections. Therefore,  
4 Verizon's proposal puts all the reciprocal obligations for any transit services in Section  
5 7.2.7 of its Proposed Agreement. Transit obligations affect a number of detailed sections,  
6 and it is unduly complicated and potentially confusing to make specific changes to all  
7 these sections in order to provide for a service that Cavalier has not yet developed.

8 <b>IV. AFFIRMATIVE OBLIGATIONS TO ASSIST WITH NEGOTIATIONS (ISSUE</b> 9 <b>C5)</b>
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10 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

11 A. Cavalier seeks to compel Verizon to assist Cavalier in its negotiations with third party  
12 carriers in its proposed Section 7.2.8. Cavalier's language is unnecessary and would  
13 impose burdensome obligations on Verizon that are not required by the Act. Verizon's  
14 proposed Section 7.2.8 provides that Verizon will not hamper any negotiations between  
15 Cavalier and carriers for whom Verizon provides transit services. Verizon also proposes  
16 that it will provide reasonably limited assistance to Cavalier upon Cavalier's request.

17 **Q. IS VERIZON WILLING TO PROVIDE ANY AFFIRMATIVE ASSISTANCE TO**  
18 **CAVALIER?**

19 A. Yes, even though Verizon has no obligation under the Act to provide any affirmative  
20 negotiating assistance. In Section 7.2.8 of Verizon's Proposed Agreement, Verizon  
21 agrees to provide names, addresses and phone numbers of points of contact of various  
22 carriers with which Cavalier wishes to establish reciprocal traffic arrangements in  
23 Virginia, provided that Verizon has such information in its possession.

1   **Q.     WHAT IS CAVALIER’S PROPOSAL?**

2    A.    Cavalier’s version of Section 7.2.8 would require Verizon to actively assist Cavalier in its  
3           negotiations with third-party carriers. For example, any time Cavalier wanted to  
4           negotiate traffic exchange agreements with any third party with whom Verizon is  
5           “materially involved” in providing transit services, Verizon would be required to provide  
6           information, respond to inquiries, and in some cases even participate in Cavalier’s  
7           negotiations with the third-party carrier.

8   **Q.     WHAT IS WRONG WITH CAVALIER’S PROPOSAL?**

9    A.    First, it is unnecessary and burdensome to require Verizon to assist Cavalier in its  
10          negotiations with third parties. Verizon already provides an enormous amount of  
11          information to Cavalier through its signaling stream and billing tapes, and nothing  
12          prevents Cavalier from investing in resources to analyze this data itself. Moreover, the  
13          burden that Cavalier seeks to impose on Verizon cannot be limited just to the  
14          Cavalier/Verizon relationship. If Cavalier’s language is included in this agreement, and  
15          other carriers elect to adopt it, the aggregate costs to Verizon would be substantial.  
16          Second, much of the information Cavalier seeks to obtain is likely to be competitively  
17          sensitive, so that Verizon would not be able to supply it to Cavalier in any event.

18   **Q.     SHOULD THE BUREAU REJECT CAVALIER’S PROPOSAL?**

19   A.    Yes. Cavalier should not be permitted to compel Verizon to get into the business of  
20          negotiation support. Instead, the Bureau should approve Verizon’s proposal, which  
21          requires Verizon to provide Cavalier with reasonably limited assistance.

**V. CUSTOMER CONTACTS (ISSUE C17)**

**Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

A. Verizon has proposed contract language that appropriately makes each carrier responsible for communications to and from its own customers. Verizon also proposes that, in the event a customer calls the wrong carrier, that carrier will refer the customer to the right carrier in a courteous, non-disparaging manner and at no charge. Verizon's Proposed Agreement § 18.2.3.2.

**Q. WHAT IS CAVALIER'S PROPOSAL ON THIS ISSUE?**

A. Cavalier attempts to impose contractual obligations beyond those required by the Act by, among other things:

- Requiring an investigation and a report whenever one carrier makes even the flimsiest assertion that the other carrier has inappropriately contacted one of the first carrier's customers. Cavalier's Proposed Agreement § 18.2.5.
- Adding a series of penalties and "bonus" penalties in the event that this section is violated in even the most immaterial way. Cavalier Proposed Agreement §§ 18.2.6; 18.2.7.

**Q. DO YOU KNOW WHY CAVALIER IS ATTEMPTING TO IMPOSE OBLIGATIONS ON VERIZON THAT ARE FAR BROADER THAN THOSE REQUIRED IN EITHER THE ACT OR COMMISSION RULES?**

A. No. Cavalier's Petition offers no justification for these meritless provisions. Cavalier refers to its arbitration petition filed with the Virginia SCC last year, but that petition makes only a vague reference to "certain problems," and does not explain Cavalier's position any further.

1 **Q. IN SECTION 18.2.3.4 OF ITS PROPOSED AGREEMENT, CAVALIER**  
2 **PROPOSES THAT EACH PARTY “PROVIDE MUTUALLY AGREED**  
3 **REFERRALS” TO CUSTOMERS WHO INQUIRE “ABOUT THE OTHER**  
4 **PARTY’S PRODUCTS OR SERVICES.” IS THIS REQUIREMENT**  
5 **REASONABLE?**

6 A. No. Verizon should not be responsible for training its personnel about Cavalier’s services  
7 so that Verizon employees can guide customers to the appropriate contact at Cavalier.  
8 That is Cavalier’s job. Among other things, Cavalier and other CLECs can list their own  
9 contact numbers in the front of Verizon’s telephone directories free of charge so that  
10 prospective customers can easily reach them. Verizon’s proposed language provides that  
11 if a customer calls the wrong carrier’s repair Bureau, the carrier will refer the customer to  
12 the telephone number of the right carrier’s repair bureau in a courteous, non-disparaging  
13 manner and at no charge. Verizon’s Proposed Agreement § 18.2.3.2.

14 **Q. IN SECTION 18.2.3.4 OF ITS PROPOSED AGREEMENT, CAVALIER**  
15 **PROPOSES THAT EACH PARTY NOT “DISCRIMINATE AGAINST THE**  
16 **OTHER PARTY, OR ITS PRODUCTS AND SERVICES” WHEN IT RESPONDS**  
17 **TO AN INQUIRY FROM THE OTHER PARTY’S CUSTOMER OR “A**  
18 **PROSPECTIVE CUSTOMER OF THE OTHER PARTY.” CAN YOU PLEASE**  
19 **COMMENT ON THIS PROVISION?**

20 A. I do not know what Cavalier’s non-discrimination language is supposed to mean, and  
21 Cavalier has not explained it. This language is far too vague and ambiguous to include in  
22 an interconnection agreement.

1 **Q. CAN YOU PLEASE COMMENT ON CAVALIER’S PROPOSAL IN SECTION**  
2 **18.2.3.4 THAT VERIZON SHOULD BE PROHIBITED FROM PROVIDING ANY**  
3 **INFORMATION ABOUT ITS PRODUCTS AND SERVICES WHEN A**  
4 **CAVALIER CUSTOMER OR “PROSPECTIVE CUSTOMER” CALLS, EXCEPT**  
5 **FOR INFORMATION “SPECIFICALLY REQUESTED BY THE CUSTOMER”?**

6 A. Yes. Cavalier’s proposal is unworkable. Any Virginia resident who uses a telephone is a  
7 prospective Cavalier customer, so Cavalier’s language would effectively prevent Verizon  
8 personnel from discussing Verizon’s products or services with anyone who calls.  
9 Furthermore, Cavalier provides no justification for this language, and there is none. Both  
10 Verizon and Cavalier should be free to discuss their own products and services whenever  
11 someone calls them. Providing consumers with more information, not less, benefits  
12 competition.

13 **Q. CAN YOU COMMENT ON CAVALIER’S PROPOSALS REGARDING**  
14 **“APPROPRIATE PROFESSIONAL CONDUCT” IN SECTION 18.2.5 OF ITS**  
15 **PROPOSED AGREEMENT?**

16 A. Yes. Cavalier’s language would require an investigation and a written report whenever  
17 one carrier makes even the flimsiest assertion that the other carrier has inappropriately  
18 contacted one of the first carrier’s customers. Conducting these investigations and  
19 preparing these reports would necessarily be time-consuming because Verizon would  
20 have to discover the names of the customer and Verizon employee involved, locate them,  
21 interview them, review any relevant documents, and then write up a report.

22 Cavalier proposes language that would forbid Verizon from offering prospective  
23 customers reduced Yellow Pages advertising rates. Verizon has no such program to  
24 offer customer reduced Yellow Pages advertising rates, but even if it did, it would be  
25 entirely lawful – Yellow Pages advertising is a competitive service in Virginia and has

1        been since 1988. *Virginia SCC Order Approving Optional Regulation Plan*. Therefore,  
2        Cavalier cannot use this interconnection agreement to place restrictions on Verizon's  
3        prices for Yellow Pages advertising.

4        **Q.    CAN YOU COMMENT ON THE VARIOUS PENALTY AND "BONUS**  
5        **PENALTY" PROVISIONS THAT CAVALIER PROPOSES IN SECTION 18.2.6**  
6        **OF ITS PROPOSED AGREEMENT?**

7        A.    Yes. Cavalier proposes a system under which even a single failure to provide a referral or  
8        to train an employee according to Cavalier's specifications would lead to a \$1,000  
9        penalty. If there are more than a handful of minor infractions, there are "bonus penalties"  
10       of \$10,000 to \$25,000. If this language were adopted, it would give Cavalier a perverse  
11       incentive to manufacture complaints. There is no legitimate reason to adopt Cavalier's  
12       proposal.

13       **Q.    ARE YOU AWARE OF ANY INTERCONNECTION AGREEMENTS BETWEEN**  
14       **VERIZON AND OTHER CLECS THAT CONTAIN THE PENALTY**  
15       **PROVISIONS REGARDING CUSTOMER CONTACTS SIMILAR TO THE**  
16       **ONES PROPOSED HERE BY CAVALIER?**

17       A.    No. Verizon has over 3600 interconnection agreements nationwide, and none of them  
18       contain the kind of penalty provisions Cavalier seeks.

19       **Q.    CAVALIER REFERS TO ITS VIRGINIA ARBITRATION PETITION. THERE,**  
20       **CAVALIER ASSERTS THAT ITS PROPOSED CONTRACT PROVISIONS**  
21       **"MORE CLOSELY TRACK THE RESPONSIBILITIES SET FORTH BY THE**  
22       **FCC'S RECENT CPNI ORDER." IS THAT ASSERTION ACCURATE?**

23       A.    No. If Cavalier's proposed provisions were already included in Commission rules, there  
24       would be no need to repeat them in the interconnection agreement. Simply citing the  
25       *CPNI Order* would be sufficient. But, I understand that support for Cavalier's proposed



1 provisions is not found anywhere in the *CPNI Order*, which dealt primarily with the  
2 Commission's restrictions on a carrier providing sensitive information about its  
3 customers – for example, call records – to that carrier's affiliates. Cavalier has not  
4 offered any reasonable justification for the greatly expanded language it proposes here,  
5 and therefore its proposals should be rejected.

6 **VI. ASSURANCE OF PAYMENT (ISSUE C21)**

7 **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

8 A. Verizon has proposed language to Cavalier that is very similar to the language previously  
9 adopted by the Bureau in the *Virginia Arbitration Order* at ¶ 972. This language permits  
10 Verizon to demand adequate assurance of payment in the event that a CLEC becomes  
11 financially unstable or unable to make payment. The limited protection afforded to  
12 Verizon by this language is similar to that provided by the security payments that Verizon  
13 may require of its own end users under its retail tariffs, and the insurance Verizon  
14 requires from its vendors. Cavalier does not take issue with any particular part of  
15 Verizon's proposal, but instead strikes all of Verizon's proposed language.

16 **Q. SHOULD THE PARTIES' INTERCONNECTION AGREEMENT INCLUDE**  
17 **LANGUAGE REQUIRING ADEQUATE ASSURANCE OF PAYMENT IN THE**  
18 **EVENT THAT CAVALIER BECOMES FINANCIALLY UNSTABLE OR**  
19 **UNABLE TO MAKE PAYMENT?**

20 A. Yes. Verizon's language is essential in light of the recent wave of CLEC bankruptcies.  
21 Verizon should not be exposed to the risk of providing service without payment.

1 **Q. PLEASE DESCRIBE VERIZON'S ASSURANCE-OF-PAYMENT PROPOSAL.**

2 A. Under Verizon's proposed Section 20.6, Verizon may request assurance of payment:

- 3       • If Cavalier cannot demonstrate its creditworthiness;
- 4       • If Cavalier fails to pay a bill on a timely basis; or
- 5       • If Cavalier admits that it is unable to pay bills or commences a bankruptcy
- 6       proceeding.

7 Since Verizon is required to provide service to Cavalier, Verizon's proposal is necessary

8 to address its legitimate need for financial protection in case Cavalier is or becomes non-

9 creditworthy. The current volatility of the telecommunications industry makes

10 Verizon's need for an adequate assurance provision even more acute.

11 **Q. WHAT DOES CAVALIER PROPOSE?**

12 A. Cavalier deletes all of Verizon's proposed language on assurance of payment, and

13 proposes no language of its own. In other words, Cavalier proposes that Verizon is

14 entitled to no protection in that event that Cavalier fails to pay bills or becomes non-

15 creditworthy.

16 **Q. IS VERIZON'S PROPOSAL FOR CAVALIER COMPARABLE TO WHAT**

17 **VERIZON OFFERS TO OTHER CARRIERS IN VIRGINIA?**

18 A. Yes. In fact, this provision is very similar to the assurance of payment provision that is

19 contained in the AT&T Agreement and which was approved by the Bureau.

1 **Q. WHY IS IT NECESSARY TO HAVE AN ADEQUATE ASSURANCE-OF-**  
2 **PAYMENT PROVISION IN AN INTERCONNECTION AGREEMENT?**

3 A. Verizon's recent arbitration with WorldCom provides a particularly striking example.  
4 When Verizon provided its assurance-of-payment proposal to WorldCom in the *Virginia*  
5 *Arbitration*, WorldCom claimed that Verizon's proposal was only necessary for "other,  
6 less financially stable" CLECs. *Virginia Arbitration Order* ¶ 726. WorldCom's  
7 bankruptcy makes it abundantly clear that Verizon cannot rely on apparent CLEC  
8 financial stability, past CLEC performance, or a CLEC's claims of financial stability.

9 **Q. IN THE VIRGINIA ARBITRATION ORDER, DID THE BUREAU DISCUSS THE**  
10 **LEGITIMACY OF VERIZON'S INTEREST IN ASSURANCE OF PAYMENTS?**

11 A. Yes. The Bureau agreed with Verizon, stating, "Verizon has a legitimate business  
12 interest in receiving assurances of payment ... from its [CLEC] customers." *Virginia*  
13 *Arbitration Order* ¶ 727.

14 **Q. HOW DOES VERIZON'S PROPOSAL COMPARE TO VERIZON'S RETAIL**  
15 **TARIFFS FOR ITS RETAIL CUSTOMERS?**

16 A. They are very similar. Under its retail tariffs, Verizon may require an end user who is not  
17 creditworthy to provide assurance of payment in the form of a letter of credit or an  
18 advance payment. Additionally, if the end user does not make timely payments, Verizon  
19 may suspend or terminate service. These protections are a normal business practice in  
20 this industry and other industries. Indeed, Cavalier requires similar protections from its  
21 customers: its retail tariff provides that Cavalier may suspend service to a customer that  
22 refuses to provide "security for the payment of service(s)." *See Cavalier Virginia SCC*  
23 *Tariff No. 3, §§ 2.5.3(F)(1)(c), 2.5.3(F)(3) (effective April 14, 2003).*

1 **Q. HOW DOES VERIZON'S CONTRACT LANGUAGE PROTECT VERIZON IN**  
2 **THE EVENT OF CAVALIER'S BANKRUPTCY?**

3 A. By providing for assurance of payment of charges if Cavalier commences a voluntary  
4 case or has a case commenced against it under the U.S. Bankruptcy Code, Verizon's  
5 language helps to assure that Cavalier will continue to pay its debts to Verizon even while  
6 it is under the protection of Chapter 11. In the event that Cavalier can no longer meet its  
7 obligations, Verizon can credit the money pledged by Cavalier as assurance of payment  
8 towards Cavalier's continuing financial obligations to Verizon.

9 **VII. EMBARGOES IN THE EVENT OF BREACH (ISSUE C24)**

10 **Q. BRIEFLY DESCRIBE THE STATUS OF THE ISSUE.**

11 A. Section 22.4 of Verizon's Proposed Agreement would allow it to terminate the agreement  
12 or suspend service to Cavalier upon 25 days written notice to Cavalier and the appropriate  
13 regulatory body. Before providing Cavalier with notice of discontinuation, Verizon first  
14 must provide Cavalier with a notice of default and give Cavalier 60 days to cure the  
15 default. Only after the 60-day period passes with no cure can Verizon terminate the  
16 agreement or suspend Cavalier's service. This notice gives Cavalier the opportunity to  
17 seek relief in whatever forum it chooses if it wants to claim that termination is  
18 inappropriate. Under Cavalier's proposal, Verizon would be required to obtain an order  
19 from the Virginia SCC or the Commission before Verizon could terminate the agreement  
20 or suspend Cavalier's services for nonpayment.

1 **Q. IS IT STANDARD INDUSTRY PRACTICE TO DISCONNECT SERVICE TO A**  
2 **CUSTOMER THAT DOES NOT PAY ITS BILLS?**

3 A. Yes. No company is in business to provide free service, and it is standard commercial  
4 procedure to discontinue providing services or benefits to a customer that does not pay its  
5 bills. In the telecommunications industry, in particular, termination of service is the  
6 standard remedy for non-payment, at both the retail and wholesale levels. Indeed,  
7 Cavalier's retail tariff allows Cavalier to cease serving a customer for *any* nonpayment.  
8 *See Cavalier Virginia SCC Tariff No. 3, § 2.5.3(A) (effective April 14, 2003).* Although  
9 Cavalier's current tariff does not specify the grace period provided to the customer  
10 (merely saying that Cavalier must give "requisite prior written notice") (*See Cavalier*  
11 *Virginia SCC Tariff No. 3, § 2.5.3(F)(2) (effective April 14, 2003)*), an earlier version of  
12 the tariff specified that Cavalier could suspend service within *ten* days (*See Cavalier*  
13 *Virginia SCC Tariff No. 1, § 2.6.5(A) (effective July 8, 1999)*). These terms are  
14 substantially more severe than the analogous Verizon terms that Cavalier disputes in this  
15 proceeding.

16 **Q. IS VERIZON'S PROPOSAL CONSISTENT WITH VIRGINIA LAW?**

17 A. Yes. The Virginia SCC's rules governing an incumbent's termination of service to a  
18 CLEC require notice to the defaulting party as well as to the Virginia SCC and its  
19 Division of Communications. 20 Va. Admin. Code § 5-423-80 (2003). Section 22.4  
20 complies with this rule by requiring written notice of default to both the defaulting party  
21 and the relevant regulatory authorities. Indeed, Verizon's proposal provides *more*  
22 protection for the defaulting party than the Virginia SCC rules do by providing it an  
23 opportunity to cure its default, by requiring that a default last for more than 60 days

1 before service may be terminated, and by precluding termination of services if the  
2 defaulting party has cured the default.

3 **Q. WHAT DOES CAVALIER PROPOSE IN THE EVENT THAT IT DOES NOT**  
4 **PAY ITS BILLS?**

5 A. In Section 22.4, Cavalier proposes that Verizon obtain an order from the Virginia SCC or  
6 the Commission before terminating service or refusing to install additional services for  
7 non-payment. Cavalier's proposal would permit it to avoid paying legitimate bills for  
8 months and would encourage Cavalier to litigate groundless disputes. There is no such  
9 requirement in any of Verizon's interconnection agreements in Virginia, and no reason to  
10 impose one here.

11 Allowing Cavalier to engage in delay tactics would be particularly troubling, as Cavalier  
12 has in the past run up millions of dollars in severely overdue unpaid bills. Given this  
13 history, Cavalier's proposal – which would give it greater freedom not to pay its bills in  
14 the future – deserves no serious consideration. Accepting Cavalier's proposal would be  
15 especially inappropriate in the current economic climate, where bankruptcies of  
16 telecommunications companies have become common even for well-established carriers.  
17 Verizon should not be required to involuntarily extend millions of dollars of credit to  
18 other carriers. Instead, Verizon should be permitted the customary remedy of  
19 discontinuing service to a customer – in this case, Cavalier – that does not pay its bill in  
20 a timely fashion.

1 **Q. WHAT IS WRONG WITH REQUIRING AN ORDER FROM THE VIRGINIA**  
2 **SCC OR THE COMMISSION BEFORE A SERVICE EMBARGO OR**  
3 **TERMINATION?**

4 A. Cavalier's proposed language would give Cavalier both the incentive and opportunity to  
5 continue nonpayment of properly billed charges. Under Cavalier's proposal, Verizon  
6 would have to continue providing service until it completed the long process of seeking  
7 Commission approval for termination. In addition to continuing to receive *existing*  
8 services for free, Cavalier could also order and receive *new* services for free while the  
9 Commission considered Verizon's request for termination. Particularly if Cavalier is  
10 approaching insolvency during this process, Verizon would likely have little prospect of  
11 getting paid at all, even after the Virginia SCC or the Commission issued the order  
12 permitting termination of service. Under Verizon's proposal and the Virginia SCC's  
13 rules, Verizon must notify the Virginia SCC 25 days prior to terminating service. This  
14 notice provides more than adequate protection to Cavalier.

15 **Q. HAVE COURTS CONSIDERED THE HARM TO VERIZON FROM ALLOWING**  
16 **CAVALIER TO CONTINUE TO RECEIVE SERVICES WITHOUT PAYING**  
17 **FOR THEM?**

18 A. Yes. In *Cavalier v. Verizon Virginia*, the District Court for the Eastern District of  
19 Virginia noted Cavalier's tendency to litigate rather than pay its bills:

20 Cavalier readily admits it has the money to pay its bills and that it  
21 is not currently in financial difficulty. As a result of a billing  
22 dispute with Verizon, Cavalier has simply opted not to pay,  
23 apparently in the hope of gaining some leverage in discussions  
24 with Verizon.

25 The Court recognized the inherent danger of barring a carrier from enforcing its  
26 contractual remedies of termination or suspension in the event of a CLEC default. In

1 denying Cavalier's motion to lift a Verizon-imposed service embargo for nonpayment,  
2 the Court thus held:

3 Cavalier made the determination that it would not pay bills that it  
4 believed contained errors. It acknowledges that it owes Verizon  
5 money.... [I]f Cavalier received the benefit of the injunctive relief  
6 it seeks, Verizon would be placed in a position of effectively  
7 having to continue to provide services to Cavalier without  
8 compensation.

9 *Cavalier v. Verizon Virginia* at 5. This is precisely the situation Verizon would find  
10 itself in if Cavalier's language were approved.

11 **Q. CAN YOU COMMENT ON CAVALIER'S PROPOSED RATIONALE FOR ITS**  
12 **LANGUAGE?**

13 A. Yes. Cavalier claims that "Verizon should not have the unilateral right to force Cavalier  
14 to give notice to its customers that it may exit the market, if that is not Cavalier's  
15 intention." But Verizon's proposed Section 22.4 says nothing about notice to a defaulting  
16 party's customers. It is the Virginia SCC's rules that require a carrier to notify its *own*  
17 customers of a pending disconnection. If Cavalier disagrees with those rules, it should  
18 address that complaint to the Virginia SCC. Cavalier should not be permitted to  
19 circumvent them here by seeking special treatment from the Bureau.

20 **VIII. CONCLUSION**

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

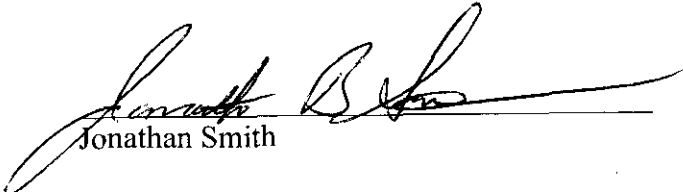
22 A. Yes.



1                                   **Declaration of Jonathan Smith**  
2

3   I declare under penalty of perjury that I have reviewed the foregoing testimony and that those  
4   sections as to which I testified are true and correct.  
5

6   Executed this 16<sup>th</sup> day of September, 2003.

7  
8  
9  
10                                     
11                                   Jonathan Smith



**VERIZON VIRGINIA INC.**

**PANEL TESTIMONY OF R. MICHAEL TOOTHMAN AND STEPHEN C. SPENCER**

**DIRECTORY LISTINGS ISSUES (ISSUE C18)**

**CC DOCKET NO. 02-359**

**SEPTEMBER 23, 2003**

1 **I. WITNESS BACKGROUND AND OVERVIEW**

2 **Q. PLEASE STATE YOUR NAME AND PROVIDE A BRIEF BACKGROUND OF**  
3 **YOUR EDUCATION AND EXPERIENCE.**

4 A. My name is R. Michael Toothman. I am employed as a Director, Interface Business  
5 Requirements, Customer Relationship Management, in Verizon's Wholesale Markets  
6 group. My business address is 13100 Columbia Pike, Silver Spring, Maryland. My  
7 current duties and responsibilities include supervising the group that prepares business  
8 requirements for changes to Operations Support Systems interfaces and that publishes  
9 business rules to CLECs on how to request services, including directory listings.  
10 Members of my group also lead an interdepartmental team to handle the systems and  
11 operational process by which Verizon manages white page directory listings on behalf of  
12 CLECs. I joined Verizon in 1972 and have held various positions of increasing  
13 responsibility in the areas of system requirements/development, change management and  
14 testing associated with the Operating Support Systems used to order and provision  
15 directory listings. I have a Bachelor of Science degree in mathematics and a Master of  
16 Information Systems degree from Virginia Polytechnic Institute.

17 My name is Stephen C. Spencer. I am Director- Regulatory Affairs for Verizon. My  
18 business address is 600 East Main Street, Suite 1100, Richmond, VA 23219. I assumed  
19 my present position in 2000. I am responsible for all state regulatory matters affecting  
20 Verizon in Virginia. I have twenty-five years of telecommunications experience through  
21 a combination of assignments with the former Contel and GTE Corporations and  
22 Verizon. Prior to my current assignment, I held positions with increasing responsibility  
23 in tariffs/pricing, accounting, separations and settlements, carrier billing, revenue

requirements, public affairs and regulatory and governmental affairs. I am a graduate of the College of William and Mary with a bachelor's degree in Business Administration.

## **II. PURPOSE OF TESTIMONY**

### **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of our testimony is to explain Verizon's position on various directory listings issues.

### **Q. BRIEFLY DESCRIBE THE STATUS OF THIS ISSUE.**

A. The parties dispute various contract terms relating to directory listings. For example, Cavalier seeks written certification from Verizon on the accuracy of each Cavalier directory listing. In addition, Cavalier proposes that Verizon provide large credits to Cavalier for any and every error to its customer's listings. Verizon's directory listings proposals are more reasonable, are consistent with the manner in which Verizon provides directory listings to its retail customers and would better accomplish the important public policy goal of requiring cooperation by both parties in ensuring that customers' directory listings are as accurate as possible.

## **III. DIRECTORY LISTING PROCESS (ISSUE C18)**

### **Q. COULD YOU PLEASE SUMMARIZE VERIZON'S DIRECTORY LISTING PROCESS?**

A. Verizon's directories are published by its affiliated directory publishing company, Verizon Information Services. Verizon Information Services publishes directories that include listings from Verizon's retail customers as well as customers of CLECs (in the

1 area served by the directory) such as Cavalier. Cavalier and Verizon customers can  
2 obtain one primary white page listing without charge. Cavalier and Verizon business  
3 customers can also obtain one yellow page listing without charge.

4 **Q. DO CLECS SUCH AS CAVALIER PAY VERIZON FOR INCLUDING THEIR**  
5 **CUSTOMERS' LISTINGS IN THE WHITE PAGES DIRECTORY?**

6 A. No. Verizon does not impose a discrete charge on CLECs or their customers for  
7 including primary listings in Verizon's white page directories and, for business  
8 customers, yellow page directories. If Cavalier's customers request multiple listings,  
9 foreign listings, or other non-basic listing products, Verizon imposes a separate charge,  
10 comparable to the charge Verizon would impose on its retail customers.

11 **Q. DOES VERIZON PERMIT CLECS TO VERIFY INDEPENDENTLY THE**  
12 **ACCURACY OF THEIR CUSTOMERS' LISTING BEFORE PUBLICATION?**

13 A. Yes. Verizon permits all CLECs, including Cavalier, to validate their customers' listings  
14 prior to publication. Approximately 30 to 90 days before the close date for each  
15 directory, Verizon makes a Listing Verification Report available to carriers that contains  
16 the listings that correspond to their customers and that are scheduled for publication in  
17 the upcoming directory. The Listing Verification Report includes name, address, listed  
18 telephone number, class of service, customer directory name, directory appearance, and  
19 type of listing. Verizon makes the Listing Verification Report available in an electronic  
20 text format. A CLEC can import the report to a third-party database or spreadsheet  
21 software such as Access or Excel, which allows the CLEC to search, sort and compare its  
22 listings electronically.

1 **Q. PLEASE DESCRIBE THE NATURE OF THE DISPUTE RELATING TO**  
2 **CAVALIER'S PROPOSAL THAT VERIZON CERTIFY THE ACCURACY OF**  
3 **CAVALIER LISTINGS.**

4 A. In Section 19.1.5, Cavalier proposes that Verizon certify in writing that it has checked  
5 each Listing Verification Report against the information Cavalier submitted for each and  
6 every one of its customer's listings. But it is Cavalier – not Verizon – that should use the  
7 Listing Verification Report to verify its customers' listings. Cavalier has a direct  
8 relationship with the customer and knows exactly what the customer requested. Cavalier  
9 is thus in a much better position to verify the accuracy of the listing. Cavalier's proposal  
10 also ignores the central purpose of the Listing Verification Report. It is a tool that  
11 Verizon makes available to CLECs to allow them to verify independently their  
12 customers' directory listings before publication. In fact, in Verizon's Section 271  
13 proceeding for Virginia, the Commission approved of Verizon's efforts to "afford[] a  
14 competitor the opportunity to review its listings before publication" and found that the  
15 LVR process "further improves the accuracy of directory listings." Virginia 271 Order  
16 at ¶ 168. This is consistent with Cavalier's agreement in Section 19.1.5 to language that  
17 would require both parties "to use commercially reasonable efforts to ensure the accurate  
18 listing of Cavalier Customer listings." Reviewing the Listing Verification Report is a  
19 relatively simple way for Cavalier to do so.

20 **IV. CREDITS FOR OMISSIONS OR ERRORS**

21 **Q. PLEASE DESCRIBE THE NATURE OF THE DISPUTE RELATING TO**  
22 **CREDITS FOR OMISSIONS OR ERRORS IN DIRECTORY LISTINGS.**

23 A. Verizon has proposed language that compensates Cavalier fairly and reasonably for  
24 omissions or errors in Cavalier customers' non-chargeable listings. Cavalier's proposed

1 compensation scheme, on the other hand, would require Verizon to compensate Cavalier  
2 for any error, no matter how small, and appears to use a flawed methodology to establish  
3 the amounts that Verizon would compensate Cavalier.

4 **Q. HOW DOES VERIZON PROPOSE TO CREDIT CAVALIER FOR OMISSIONS**  
5 **OR ERRORS?**

6 A. In Section 19.1.6, Verizon proposes that its liability to Cavalier be “comparable to”  
7 Verizon’s liability to its own retail customers for these omissions or errors. Specifically,  
8 in the case of an omission or a service affecting error, Verizon would provide Cavalier a  
9 50% credit on the monthly UNE loop rate where Cavalier serves a customer with a loop  
10 or entirely over its own facilities and a 50% credit on the resale charges for dial tone line  
11 and fixed usage services where Cavalier serves a customer with Verizon’s resold  
12 services, in each case during the period covered by the directory in which the error or  
13 omission occurs. Thus, if Verizon omits a listing for a Cavalier customer or publishes  
14 one with a service affecting error, Verizon will provide a credit depending on how  
15 Cavalier serves the customer and where the customer has its line. If Cavalier purchases a  
16 UNE loop or uses its own facilities, the credit will be one-half of the UNE loop rate in the  
17 density cell where the customer is located (under current rates, \$10.74, \$16.45, and  
18 \$29.40 for density cells 1, 2, and 3 respectively). If Cavalier resells Verizon’s service,  
19 Cavalier will receive one-half of Verizon’s fixed monthly wholesale charges for that  
20 customer’s resold service.

21 **Q. WHAT IS A SERVICE AFFECTING ERROR?**

22 A. A service affecting error would be a directory listing that materially impaired that



customer's ability to receive calls. Whether a particular error was service affecting would depend on the particular facts and circumstances of the error.

**Q. HOW IS VERIZON'S LIABILITY TO CAVALIER UNDER THIS PROPOSED LANGUAGE "COMPARABLE TO" VERIZON'S LIABILITY TO ITS OWN CUSTOMERS?**

A. As I explain below, Verizon uses a formula to calculate Cavalier's credits similar to the formula it uses to calculate credits for Verizon's retail customers, although Verizon's proposal reflects the fact that these credits are being offered in a wholesale rather than a retail context.

**Q. HOW DOES VERIZON CALCULATE ITS LIABILITY TO ITS RETAIL CUSTOMERS?**

A. Verizon's retail tariff states that Verizon's liability "[s]hall be limited to the amount of actual impairment to the customer's service and in no event shall exceed *one-half the amount of the fixed monthly charges applicable to Local Exchange Services. . . .* affected during the period covered by directory in which the error or omission occurs." Verizon Virginia Tariff No. 201, Section 1.E.3 (emphasis added). Thus, the maximum credit a retail customer may receive is 50% of the fixed monthly charges paid for local exchange service. These "fixed monthly charges" include the dial tone rate as well as any local usage for which the customer pays a fixed charge. The tariff language thus excludes variable charges, such as measured or "per call" usage packages as well as taxes, fees, or charges for vertical features.